

ZONING BOARD OF ADJUSTMENT  
268B MAMMOTH ROAD  
LONDONDERRY, NH 03053

DATE: MAY 20, 2009

CASE NO.: 5/20/2009-1

APPLICANT: MICHAEL AND TERRI CASE  
7 FALCON ROAD  
LONDONDERRY, NH 03053

LOCATION: 7 FALCON ROAD, 1-71-4, AR-I

BOARD MEMBERS PRESENT: VICKI KEENAN, CHAIR  
NEIL DUNN, VOTING MEMBER  
MICHAEL GALLAGHER, VOTING ALTERNATE  
MATTHEW NEUMAN, VOTING ALTERNATE  
LARRY O'SULLIVAN, CLERK

ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING  
INSPECTOR/ZONING OFFICER

REQUEST: AREA VARIANCE TO ALLOW THE CREATION OF A LOT IN THE AR-I  
ZONE WITH LESS THAN 150 FEET OF FRONTAGE AS REQUIRED BY  
SECTION 2.3.1.3.2 OF THE ZONING ORDINANCE.

PRESENTATION: Case No. 5/20/2009-1 was read into the record with two previous cases  
Listed, both granted with restrictions.

VICKI KEENAN: Do you have the restrictions on those cases? Or do you want to read them  
later?

JAYE TROTTIER: This was the 2008 decision.

LARRY O'SULLIVAN: One of them was 2008...was the 'less than a hundred and fifty (150) feet  
of frontage, Class V road' ...1/16/2008-2..." approval of the subdivision by the Londonderry  
Planning Board."

JAYE TROTTIER: And then it was the same in 2006. Conditioned upon approval.

LARRY O'SULLIVAN: Yeah, the conditions for 2006-5 were the same.

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VICKI KEENAN: Okay. If you'd like to start by introducing yourself and stating your address, then you can present your case.

TIM WININGS: I'm Tim Winings of TJW Survey. I also live in town at 13 Kestree Drive. And I'm representing Mike and Terri Case tonight. I'm presenting exactly the same thing that we presented two (2) years before, well, the last two (2) years. The first time it was not carried through for medical reasons. The second time was for economic reasons. But we're intending to do exactly the same thing as we did before now and we're very close to submitting to the Planning Board, so we actually intend to follow through with it this time around. The situation is the lot is at the end of the cul de sac and the reason we need the frontage variance is because of the way the lot is situated. We tried to maintain the hundred and fifty (150) feet of frontage as required by the regulations. The side lot line would intersect at a relatively steep angle with the right of way, which the Planning Board will not allow. They require that it has to be nearly perpendicular, which they interpret to be within five (5) degrees of perpendicular which is shown on the exhibit that I presented to you, or submitted for the application. It was fairly straight forward. The total frontage is like, I believe, a hundred and twelve (112) feet and change now as we are proposing. And I'm open to questions or I can go through the steps if you'd like.

VICKI KEENAN: Would you walk through the five (5) points on your application?

TIM WININGS: Okay.

VICKI KEENAN: Then we'll open it up for questions.

TIM WININGS: Under section 4.A of your application, the proposed use would not diminish the surrounding property values because the proposed house will be comparable with those in the existing area in the neighborhood and will have more than the average separation between the other houses, it's just the way the lot is configured. This house would be spaced further apart from its direct abutters than the rest of the houses in the neighborhood actually are. So, it shouldn't have an impact on the value of the abutting properties at all. Granting the variance would not be contrary to the public interest because of the same reason, actually. There's adequate separation between the existing houses and the proposed lot lines will be clearly marked at the perpendicular section of that affected lot line. Its a hundred (100) feet long. It's an open area and both ends are clearly marked, so it kind of meets the intent of making it more square, a more regular lot that's affected by that. And the total frontage for the two (2) lots far exceeds what one would be required for two (2) lots. It's just the configuration prevents applying sufficient for one (1). Special conditions exist such that the literal enforcement of the ordinance results in unnecessary hardship. An area variance is needed to enable the applicant's proposed use of the property, given the following special conditions of the property. To comply with the requirement, the lot line would have to form a relatively acute angle as I explained before with the right of way and the intention of that is just so that there is no confusion on the lot line between eventual neighbors. So it will be perpendicular and it will be easily seen. And the benefit sought by the applicant cannot be achieved by some other method reasonably

89 feasible for the applicant's purpose other than the area variance because the existing lot  
90 configuration. You can just look at that and see there's really no other way to avoid that, short  
91 of making an even more ridiculous configuration by making another jog in that line. Granting  
92 the variance would do substantial justice because the proposed lots will comply with all the  
93 requirements, including the intent of the frontage requirement, I believe. And the use is not  
94 contrary to the spirit of the ordinance because of being on the cul de sac, the practical frontage,  
95 being on the outside of that curve, the practical frontage actually exceeds what the actual  
96 frontage is because if you measure to that, the setback line, it's actually very nearly compliant.  
97 Well, I haven't actually computed that but it's much closer to the required hundred and fifty  
98 (150) as opposed to its actual frontage at the right of way. So, it meets the intent of the  
99 ordinance there. And the house on the affected lot sits far back from the actual right of way, so  
100 it's not even close to being in the area that would be affected by the shortage of that frontage.  
101 And again, the separation between the houses will far exceed the average in that neighborhood.  
102 And that covers it and what we're just seeking is the same approval that we had before.

103  
104 VICKI KEENAN: Why don't we open it up to the Board for questions.

105  
106 LARRY O'SULLIVAN: How does the Planning Board...has it ever been brought to the Planning  
107 Board?

108  
109 TIM WININGS: I've had discussions with staff but it has not gone through a formal application  
110 with the Planning Board as yet. I did bring a copy of the plan so you can see that we've made  
111 progress and we actually...

112  
113 LARRY O'SULLIVAN: Does the plan that you have there include where a proposed home and  
114 the driveway would be?

115  
116 TIM WININGS: Yes, it does, actually.

117  
118 VICKI KEENAN: Could we see those? Could you show them to us?

119  
120 TIM WININGS: I only brought the one (1) copy but I can show it to you.

121  
122 LARRY O'SULLIVAN: Can you provide a second copy or is there only one (1) copy or...?

123  
124 TIM WININGS: Yeah, that's all...I only brought the one (1)...

125  
126 LARRY O'SULLIVAN: Oh, 'cause it if you show it to us, we're concerned about it as evidence.

127  
128 TIM WININGS: Pardon?

129  
130 LARRY O'SULLIVAN: We're concerned about it as evidence. Can that be used as evidence?

131  
132 VICKI KEENAN: Could you leave that copy with us?

133

134 TIM WININGS: Yes, certainly.  
135  
136 VICKI KEENAN: Okay.  
137  
138 LARRY O'SULLIVAN: Okay. Great, we'll take it.  
139  
140 [see Exhibit "A" on file]  
141  
142 TIM WININGS: Now this is the proposed house and the proposed driveway...  
143  
144 LARRY O'SULLIVAN: I see.  
145  
146 TIM WININGS: ...for the newly created lot. This is the existing house and its existing  
147 driveway. And this is the shortage of the frontage.  
148  
149 LARRY O'SULLIVAN: Mm-hmm. I think that's what everybody needs to see.  
150  
151 VICKI KEENAN: Definitely.  
152  
153 LARRY O'SULLIVAN: You wanna take this down, Neil?  
154  
155 NEIL DUNN: Oh, I'm sorry. Did you see what you needed to see?  
156  
157 LARRY O'SULLIVAN: Yes, sir.  
158  
159 NEIL DUNN: Oh, you did?  
160  
161 LARRY O'SULLIVAN: Mr. Winings, do you want to point it out for everybody?  
162  
163 TIM WININGS: Certainly.  
164  
165 [inaudible side comments].  
166  
167 NEIL DUNN: They're looking to see what else is going on here, though. Conservation  
168 overlays...  
169  
170 TIM WININGS: Yes.  
171  
172 [inaudible, overlapping comments]  
173  
174 NEIL DUNN: This dark dotted line, is that part of the Conservation Overlay? What is that?  
175  
176 TIM WININGS: No, that's a soils line.  
177  
178 NEIL DUNN: Oh, okay.

179  
180 TIM WININGS: Yeah, [inaudible] soil types that's required for the lot sizing.  
181  
182 MATT NEUMAN: Is it right up here? Isn't that a road...?  
183  
184 MICHAEL GALLAGHER: No.  
185  
186 TIM WININGS: That's a split between two (2) different soil types.  
187  
188 MATT NEUMAN: Oh, no, I was...  
189  
190 NEIL DUNN: So, then this is the proposed...?  
191  
192 TIM WININGS: Yes, this is what they call an easement line for the drainage easement that fits  
193 through here. This is the proposed lot line over on this edge of the easement and then  
194 perpendicular to the right of way.  
195  
196 LARRY O'SULLIVAN: Do you see that, guys?  
197  
198 MICHAEL GALLAGHER: Where'd you say the driveway was?  
199  
200 LARRY O'SULLIVAN: New driveway.  
201  
202 TIM WININGS: The proposed driveway is...  
203  
204 MICHAEL GALLAGHER: Oh...  
205  
206 LARRY O'SULLIVAN: Here's the proposed house.  
207  
208 TIM WININGS: ...is right here. This is the proposed house and the driveway is here directly  
209 across from an existing driveway. The existing driveway for this house is over here and that's  
210 back to the existing house which is well over here.  
211  
212 MATT NEUMAN: And the new lot would be about one point seven (1.7) acres?  
213  
214 MICHAEL GALLAGHER: Along there. Oh, okay.  
215  
216 LARRY O'SULLIVAN: Mm-hmm.  
217  
218 MATT NEUMAN: And where are the surrounding houses? Do you know?  
219  
220 NEIL DUNN: Pardon me?  
221  
222 MATT NEUMAN: The adjacent houses? The abutting houses?  
223

224 TIM WININGS: The abutting houses? There's one situated right in here and there's one over  
225 here and there's one over here and one up here.  
226  
227 NEIL DUNN: And a nice pool going in up there.  
228  
229 TIM WININGS: Yes.  
230  
231 VICKI KEENAN: Right there.  
232  
233 TIM WININGS: And this is Mike and Terri's house.  
234  
235 NEIL DUNN: Which does sit way back. That still leaves them five (5) acres, huh?  
236  
237 TIM WININGS: Yes.  
238  
239 MATT NEUMAN: And a big pond, right?  
240  
241 TIM WININGS: Yes.  
242  
243 NEIL DUNN: What do we have for frontage for the two (2) different...?  
244  
245 TIM WININGS: This is the critical one that I need the variance for, a hundred and twenty two  
246 (122) and change.  
247  
248 NEIL DUNN: A hundred and twelve (112)?  
249  
250 TIM WININGS: A hundred and twelve (112) and change. I'm reading upside down.  
251  
252 NEIL DUNN: And on this one, because you have frontage on this, you're gonna...  
253  
254 TIM WININGS: There's all kinds of frontage on that...  
255  
256 VICKI KEENAN: Two forty six (246).  
257  
258 NEIL DUNN: Yeah, it goes like a mile and a half down there.  
259  
260 MATT NEUMAN: Okay.  
261  
262 VICKI KEENAN: Okay.  
263  
264 NEIL DUNN: Anybody else need to see any more?  
265  
266 MATT NEUMAN: No, that's good.  
267

268 LARRY O'SULLIVAN: Now this is all proposed as well. This hasn't gone to the Planning  
269 Board? No.  
270  
271 TIM WININGS: It has not.  
272  
273 LARRY O'SULLIVAN: It's not final that that's where the driveway will be. It's also not final  
274 that's where the house will be.  
275  
276 MATT NEUMAN: Right.  
277  
278 LARRY O'SULLIVAN: But that gives you the flavor of where the expectations are to be built  
279 only.  
280  
281 VICKI KEENAN: Mm-hmm.  
282  
283 LARRY O'SULLIVAN: So what we're really talking about it the requirements that Mr. Winings  
284 had to meet the criteria for the five (5) points or six (6) points or...for the lot, not...I asked for  
285 where things were planned to give us a better idea of the fit on the lot only. And I think that  
286 did a great job of it.  
287  
288 VICKI KEENAN: And if there was...yeah.  
289  
290 LARRY O'SULLIVAN: So, you know, my concern was at one point several years ago when we  
291 heard this, uh-oh, here we have another crowding scenario where you're gonna be shoving two  
292 (2) driveways next to each other. That's not the case at all. They're separated by a great deal of  
293 distance, so...that's...  
294  
295 VICKI KEENAN: I agree. I drove by this site and...  
296  
297 MICHAEL GALLAGHER: Yeah, I did too.  
298  
299 VICKI KEENAN: It's very open. I wouldn't think there would be a crowding concern at all  
300 whatsoever.  
301  
302 MICHAEL GALLAGHER: That existing house is...where was the driveway for that? I didn't  
303 even see it.  
304  
305 NEIL DUNN: It was a dirt driveway on...  
306  
307 TIM WININGS: Yes, there's a dirt driveway that runs right down that lot line, basically.  
308  
309 NEIL DUNN: Yeah, right along the edge.  
310  
311 LARRY O'SULLIVAN: I know a past owner of that house and had been to that property before  
312 and their intention when they built the place originally was so that they'd have some solace in

313 that part of the world because it's pretty hectic in the workaday world but I like that part of the  
314 town and I think that they're doing as good justice as they can to this lot. That's why I voted for  
315 it the last two (2) times.

316  
317 VICKI KEENAN: Mm-hmm. I agree. Are there any further questions from the Board? Can we  
318 open...oh, sorry, go ahead, Neil.

319  
320 NEIL DUNN: No, I guess I'm good. I was just gonna ask if there was anything from the  
321 inspection...

322  
323 RICHARD CANUEL: Oh, absolutely.

324  
325 NEIL DUNN: No, I mean from your perspective, was there anything you thought we should  
326 know about? Or consider?

327  
328 RICHARD CANUEL: Yeah, definitely. I don't know if you wanna open to public input first  
329 before you reach your deliberations and things and then we can discuss that or...?

330  
331 VICKI KEENAN: No, that's... let's hear what your thoughts are.

332  
333 RICHARD CANUEL: Yeah, I do have an issue. This case came before this Board twice before  
334 and the variance was granted with the condition that the applicant obtain subdivision approval  
335 from the Planning Board. However, there was not a time frame attached to that condition.  
336 Now our ordinance does have a restriction that when applicable, a building permit must be  
337 applied for within twelve (12) months of the granting of a variance. In this particular case, a  
338 subdivision does not necessarily require the issuance of a building permit. I mean, a parcel can  
339 be subdivided and sit undeveloped for a number of years. So, from my perspective, I sort of  
340 questioned whether this application should have come back to the Board in the first place. But  
341 with that said, the application is submitted and the Board is discussing now, so I would  
342 recommend if the Board decides to grant this variance, that if they want to have that same  
343 condition, that the applicant obtain subdivision approval from the Planning Board that you  
344 attach a time frame to that.

345  
346 LARRY O'SULLIVAN: Right now we have a time frame that's built into all the variances. If it  
347 isn't acted on within twelve (12) months...

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349 RICHARD CANUEL: That's not the case.

350  
351 LARRY O'SULLIVAN: ...it's considered to be...

352  
353 RICHARD CANUEL: That's not the case. Not as I see it. If you look at section 4.1.8 of our  
354 ordinance, under "Restrictions," it says when applicable, a building permit has to be applied for  
355 within twelve (12) months of the granting of a variance. That would be a case where someone's  
356 submitting a variance request to build a structure that's gonna encroach on a setback, for  
357 instance, because that owner has the intention of building that structure. In this particular case,

358 it's a subdivision and there really is no intention immediately to build a structure. So there's no  
359 time frame...

360

361 LARRY O'SULLIVAN: Associated.

362

363 RICHARD CANUEL: ...associated with that as far as restrictions from our ordinance.

364

365 LARRY O'SULLIVAN: So we'll put a time frame on it. So we'll put a time...

366

367 RICHARD CANUEL: So I would say, if you attach that same condition to include a time frame,  
368 'cause like I say, it's pretty questionable whether this application should even be here right now.  
369 And that time frame could be anything. That's at the Board's discretion. It could be twelve (12)  
370 months, twenty four (24) months, it could be six (6) months. That's at the Board's discretion  
371 because there is no restriction as far as that's concerned with our ordinance, so...definitely  
372 consider that.

373

374 TIM WININGS: Actually, I find that to be kind of a gray area, so I wanted to cover all  
375 conditions.

376

377 RICHARD CANUEL: Yeah, that's fine. That's why I say, you know, the application is here  
378 now, let's get that restriction out there and get that time frame stated so if that occurs again, we  
379 know we have a legal variance that has expired because of the time frame, so...

380

381 VICKI KEENAN: What's the time frame that Michael and Terri are thinking about actually  
382 pulling the trigger and subdividing the lot?

383

384 TIM WININGS: We expect to submit within the next week or so for review and then as soon as  
385 possible after we get through the review process, to submit to the Planning Board. So, we were  
386 expecting another year on the variance.

387

388 VICKI KEENAN: Mm-hmm. Okay.

389

390 RICHARD CANUEL: I think to be consistent with the ordinance, twelve (12) months would be  
391 reasonable.

392

393 VICKI KEENAN: Mm-hmm.

394

395 LARRY O'SULLIVAN: And you know what? That's probably a good change to make to our  
396 Town plan and to our ordinances in general, as opposed to just a building. Maybe that should  
397 be part of what a new zoning requirement is, that action must be taken on, you know, as  
398 prescribed by the Board, within twelve (12) months of any variance being applied.

399

400 RICHARD CANUEL: Yeah, I suppose you could do that. I mean, as the Board knows, a  
401 variance goes with the property and is forever.

402

403 LARRY O'SULLIVAN: Yeah, but you don't start it until you start it.

404

405 RICHARD CANUEL: Regardless of who owns the property. Like I say, you know, a variance  
406 attached to the requirement for a building permit, when someone's looking to build a structure,  
407 you know, that owner has that intent of developing the property, whereas in this particular  
408 case, they don't, so rather than including that in the ordinance, I would say just do it on a case  
409 by case basis just like we're doing it now.

410

411 LARRY O'SULLIVAN: Well, is this the only example that you can think of where we would  
412 have no action be required, no visible action, no...well actually, what we would require would  
413 be the presentation to the Planning Board. That would be the action that we would need to  
414 have accomplished within twelve (12) months.

415

416 TIM WININGS: Mm-hmm.

417

418 NEIL DUNN: Yeah, 'cause we're not looking at telling them when to build the property.

419

420 LARRY O'SULLIVAN: Yeah.

421

422 NEIL DUNN: We're just saying, 'look, in order for the lot to be sub-approved, you have to get  
423 the subdivision approved by the Planning Board within a year for the variance to stick.' But  
424 once they do that, then, I mean, it can take a year or more to build a building.

425

426 RICHARD CANUEL: That's right.

427

428 LARRY O'SULLIVAN: Or to get approvals.

429

430 RICHARD CANUEL: Yeah, that's right.

431

432 NEIL DUNN: So, I guess for verbiage point, it'd be for the subdivision approval from the  
433 Planning Board and that's not tying them into any time frame on the actual construction.

434

435 RICHARD CANUEL: That's right.

436

437 NEIL DUNN: It's just to get the approval of the lot.

438

439 RICHARD CANUEL: Yeah, and like I say, that lot could be subdivided and sit undeveloped  
440 for any number of years.

441

442 NEIL DUNN: Yeah.

443

444 TIM WININGS: Just as a suggestion, I would suggest that you make it "application to the  
445 Planning Board," because as you can say...

446

447 LARRY O'SULLIVAN: As opposed to "approved," yeah.

448  
449 TIM WININGS: ...it can take a while to get through the Planning Board process.  
450  
451 VICKI KEENAN: Right.  
452  
453 RICHARD CANUEL: Yeah, because the original condition was that they obtain subdivision  
454 approval from the Board, so, you could say "apply for subdivision approval within twelve (12)  
455 months."  
456  
457 VICKI KEENAN: Mm-hmm.  
458  
459 LARRY O'SULLIVAN: Did you wanna open it to the public?  
460  
461 VICKI KEENAN: Yeah, are there any other questions from the Board? Okay, we'll open this up  
462 to the public. Is there anyone here with questions or concerns? Okay, anyone here in favor of  
463 the application? Okay, with that, we'll bring it back to the Board for further deliberation.  
464  
465 DELIBERATIONS:  
466  
467 VICKI KEENAN: It's pretty clear to me.  
468  
469 LARRY O'SULLIVAN: Yeah, me too.  
470  
471 VICKI KEENAN: Okay.  
472  
473 MATT NEUMAN: The points of law...  
474  
475 VICKI KEENAN: Right.  
476  
477 LARRY O'SULLIVAN: I suggest we make the amendment to the condition that we required  
478 last time and put a time frame on it. I'm comfortable with twelve (12) months.  
479  
480 VICKI KEENAN: Mm-hmm.  
481  
482 LARRY O'SULLIVAN: And that's consistent with the other areas that we have restrictions on  
483 already, so...  
484  
485 VICKI KEENAN: And that's that an application be submitted...  
486  
487 LARRY O'SULLIVAN: Submitted.  
488  
489 VICKI KEENAN: ...within twelve (12) months of this date.  
490  
491 LARRY O'SULLIVAN: To the Planning Board, right?  
492

493 VICKI KEENAN: Mm-hmm.  
494  
495 NEIL DUNN: I'm comfortable that he hit the five (5) points. I mean, it is a pretty awkward  
496 looking piece of property there. And because there is so much frontage on that road in reality,  
497 it's just this one existing or the existing house that's gonna be left on the five (5) acres plus that is  
498 looking for reduction and it's pretty wide open around that cul de sac and the frontage on the  
499 rest of this property. So, I do believe he hit all the points of the...  
500  
501 LARRY O'SULLIVAN: Variance requirement.  
502  
503 NEIL DUNN: ...variance requirement, so, yeah, I don't see any issue with it.  
504  
505 VICKI KEENAN: Mike or Matt, do you have anything?  
506  
507 MICHAEL GALLAGHER: No.  
508  
509 MATT NEUMAN: No, it looks good.  
510  
511 VICKI KEENAN: Okay. I'll entertain a motion.  
512  
513 LARRY O'SULLIVAN: I make a motion to approve case 5/20/2009-1 with the same conditions  
514 as the prior as well as the twelve (12) month application at the Planning Board.  
515  
516 VICKI KEENAN: Did we want to include the condition to approve that they had to get the  
517 Planning Board approval?  
518  
519 LARRY O'SULLIVAN: Yeah.  
520  
521 VICKI KEENAN: Okay. Right.  
522  
523 LARRY O'SULLIVAN: And that it be applied within twelve (12) months.  
524  
525 MICHAEL GALLAGHER: Twelve (12) months.  
526  
527 VICKI KEENAN: Is there a second?  
528  
529 MATT NEUMAN: Second.  
530  
531 VICKI KEENAN: Okay, there's a motion to grant the variance with the condition that an  
532 application be filed with the Planning Board within twelve (12) months and that they get  
533 Planning Board approval. Did I state that right?  
534  
535 LARRY O'SULLIVAN: Mm-hmm.  
536  
537 VICKI KEENAN: And a second. Is there any discussion on the motion?

538  
539 LARRY O'SULLIVAN: Are you happy with that, Richard?  
540  
541 RICHARD CANUEL: That works for me.  
542  
543 VICKI KEENAN: Okay. All those in favor, signify by saying 'aye.'  
544  
545 LARRY O'SULLIVAN: Aye.  
546  
547 MICHAEL GALLAGHER: Aye.  
548  
549 MATT NEUMAN: Aye.  
550  
551 NEIL DUNN: Aye.  
552  
553 VICKI KEENAN: Aye. Opposed? Abstentions? Okay.  
554  
555 TIM WININGS: Thank you very much.  
556  
557 RESULT: THE MOTION TO GRANT THE AREA VARIANCE WITH RESTRICTIONS WAS  
558 APPROVED, 5-0-0.  
559  
560 RESPECTFULLY SUBMITTED,  
561  
562  
563  
564 LARRY O'SULLIVAN, CLERK  
565 TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY  
566  
567 **APPROVED JUNE 17, 2009** WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED  
568 BY MATT NEUMAN AND APPROVED 4-0-1 (JIM SMITH ABSTAINED AS HE HAD NOT  
569 ATTENDED THE MEETING).